U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33667836

Date: OCT. 04, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a Brazilian jiu-jitsu coach, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act), section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievement have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not demonstrate he meets the initial evidence requirement for this classification either through evidence of his receipt of a major, internationally recognized award or by documenting that he meets at least three of the ten evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their work will substantially benefit the United States. Section 203(b)(l)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a

major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The record establishes that the Petitioner is a Brazilian jiu-jitsu athlete, coach, and referee who has been involved with the sport since 2006. He indicates that he has been employed as a coach in the United States since 2020 and intends to continue working in this capacity if granted lawful permanent resident status.

A. Evidentiary Criteria

Because the Petitioner does not claim, and the record does not establish, that he has received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed he could meet the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (vii) and (viii).

The Director concluded that the Petitioner met two of the evidentiary criteria by providing: (1) evidence of his participation as a judge of the work of others in the field, and (2) evidence of his performance in a leading or critical role for an organization or establishment that has a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3(iv) and (viii).

On appeal, the Petitioner maintains that he meets all four of the remaining claimed criteria and is otherwise qualified for the classification sought. We must determine whether his evidence "objectively meets the parameters of the regulatory description" for at least one additional criterion. *See generally* 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual (describing the two-step evidentiary review of evidence submitted in support of a petition requesting extraordinary ability classification).

The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of an individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner submitted evidence of his receipt of gold, silver and bronze medals at competitions sponsored by the International Brazilian Jiu Jitsu Federation (IBJJF), BBJ Tour, and Jiu-Jitsu World League between 2017 and 2020. In addition, he received a gold medal at the [redacted] Championship in 2008.

The Director, in determining that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i), acknowledged the submitted evidence, but emphasized that because the Petitioner indicates that he intends to work as a coach, he could not rely on his achievements as a competitive athlete in the sport.

As the Petitioner observes on appeal, U.S. Citizenship and Immigration Services (USCIS) policy guidance directly addresses the issue of athletes transitioning to coaching:

> Competitive athletics and coaching rely on different sets of skills and in general are not in the same area of expertise. However, many extraordinary athletes have gone on to be extraordinary coaches.
>
> Therefore, in general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or managing at a national level, officers can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that USCIS can conclude that coaching is within the beneficiary's area of expertise.
>
> Where the beneficiary has had an extended period of time to establish his or her reputation as a coach beyond the years in which he or she had sustained national or international acclaim as an athlete, depending on the specific facts, officers may place heavier, or exclusive, weight on the evidence of the beneficiary's achievements as a coach or a manager.

6 USCIS Policy Manual, *supra*, at F.2(A)(2). Under this policy guidance, evidence of acclaim as an athlete cannot suffice by itself to establish extraordinary ability as a coach, but USCIS officers can give proportionate weight to evidence of that acclaim when the record also shows that the acclaim has continued into a petitioner's coaching career. Here, the record shows that the Petitioner's athletic career and coaching career have overlapped and that he has been exclusively coaching only since 2020.

Therefore, the ultimate question is whether the Petitioner has shown that his coaching activity has been at a level consistent with sustained national or international acclaim. Because acclaim is considered in the context of a final merits determination, evaluation of whether the Petitioner has achieved sustained acclaim as a coach does not require an underlying finding that he meets the underlying evidentiary criterion at 8 C.F.R. § 204.5(h)(3) based solely on his coaching activities.

Accordingly, we agree with the Petitioner's claim that the Director erroneously disregarded evidence of the awards and prizes he received as a competitive athlete in Brazilian jiu-jitsu. While the record does not demonstrate that all his awards are qualifying, the Petitioner provided sufficient evidence to demonstrate that his bronze medal in the adult blackbelt category at the 2017 [redacted] Championship is a nationally recognized award that satisfies the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The record contains supporting sports media articles describing this championship as "one of the biggest events" of the "most well-established Jiu Jitsu federation," and one which gathers "the top American black belts." We will therefore withdraw the Director's finding that the Petitioner did not meet this criterion.

B. Final Merits Determination.

The Petitioner has satisfied at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i)-(x). We therefore need not consider his arguments that he meets additional evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof)

However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. USCIS must now make a final merits determination on the Petitioner's filing. The Director did not make such a finding. Rather than make this determination in the first instance, we will remand the matter to the Director.

On remand, the Director must analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's field of endeavor based on the statutory and regulatory standards. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director should consider any potentially relevant evidence of record, even if it does not fit one of the evidentiary criteria or was not presented as comparable evidence. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). The type and quality of evidence should determine the petition's approval or denial. *Id.*

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.